

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 OSCAR MADRIGAL SENCION,) Case No.: C 10-3108 PSG
13 Plaintiff,)
14 v.)
15 SAXON MORTGAGE SERVICES, INC.,)
et al.,)
16 Defendants.)
17)
ORDER GRANTING-IN-PART AND
DENYING-IN-PART DEFENDANT OCWEN'S
MOTION TO DISMISS
(Re: Docket No. 4)

19 On August 31, 2010, the parties appeared for hearing on the motion to dismiss filed by
20 Defendant Ocwen Loan Servicing, LLC (“Ocwen”). On September 3, 2010, this court entered an
21 interim order soliciting supplemental briefing from Ocwen. Ocwen timely filed the supplemental
22 brief. Based on the briefs and arguments submitted,¹

23 IT IS HEREBY ORDERED that Ocwen's motion to dismiss is GRANTED-IN-PART and
24 DENIED-IN-PART because, as discussed herein, the only cognizable cause of action stated against
25 Ocwen in the First Amended Verified Complaint ("FAC") is declaratory relief.

¹ On December 6, 2010, this case was reassigned to the undersigned due to the retirement of Magistrate Judge Trumbull. The undersigned has reviewed the tape of the oral argument held on August 31, 2010, and all briefs submitted in connection with this motion.

1 **I. BACKGROUND**

2 Plaintiff Oscar Sencion’s (“Sencion”) original complaint arose out of the actions of
 3 Defendant Saxon Mortgage Services, Inc. (“Saxon”) in connection with Saxon’s servicing of
 4 Sencion’s two home loans and the negotiations between Sencion and Saxon regarding Sencion’s
 5 request for a loan modification. Sencion alleges that on approximately March 19, 2010, just two
 6 weeks after Saxon had notified him that he had been approved for a loan modification, Saxon
 7 nonetheless sold the Subject Property² at a trustee’s sale.³ This action ensued on April 4, 2010.

8 By letter dated April 28, 2010, Ocwen sent Sencion a letter notifying him that the servicing
 9 of his mortgage loan—the right to collect payments from him—was being assigned, sold and/or
 10 transferred from Saxon to Ocwen.⁴ In the letter, Ocwen instructed Sencion to direct all of his
 11 monthly mortgage payments to Ocwen.⁵

12 On June 1, 2010, Sencion filed the FAC, adding Ocwen as a Defendant.⁶ In the FAC,
 13 Sencion alleges Ocwen violated a Temporary Restraining Order and a Preliminary Injunction against
 14 Saxon that was entered while this matter was pending in state court.⁷ Those orders enjoined Saxon,
 15 and its employees, agents, and those acting with them or on their behalf, from proceeding with
 16 foreclosure or eviction proceedings against Sencion.⁸ Specifically, Sencion alleges Ocwen violated
 17 those orders by having its agent contact Sencion’s brother-in-law to try and negotiate terms for
 18 expediting Sencion’s vacating of the Subject Property.⁹

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 21 ² As used herein, the “Subject Property” refers to Sencion’s home located at 9120 Murray
 22 Avenue, Gilroy, California.

23 ³ See FAC, ¶¶ 26, 32 and Exhs. M & P.

24 ⁴ See FAC, ¶ 37 & Exh. R.

25 ⁵ See FAC, Exh. R.

26 ⁶ See FAC, ¶ 3.

27 ⁷ See FAC, ¶ 39.

28 ⁸ See FAC, ¶¶ 35-36.

⁹ See FAC, ¶ 39.

1 **II. LEGAL STANDARDS**

2 A complaint must contain “a short and plain statement of the claim showing that the pleader
 3 is entitled to relief.”¹⁰ While “detailed factual allegations” are not required, a complaint must
 4 include “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”¹¹ In other
 5 words, a complaint must have sufficient factual allegations to “state a claim to relief that is plausible
 6 on its face.”¹² A claim is facially plausible “when the pleaded factual content allows the court to
 7 draw the reasonable inference that the defendant is liable for the misconduct alleged.”¹³
 8 Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the claims alleged in
 9 a complaint, “[d]ismissal can be based on the lack of a cognizable legal theory or the absence of
 10 sufficient facts alleged under a cognizable legal theory.”¹⁴

11 When evaluating a Rule 12(b)(6) motion, the court must accept all material allegations in the
 12 complaint as true and construe them in the light most favorable to the non-moving party.¹⁵ Review
 13 of a motion to dismiss is limited to the face of the complaint, materials incorporated into the
 14 complaint by reference, and matters of which the court may take judicial notice.¹⁶ The court is not
 15 required to accept “legal conclusions cast in the form of factual allegations if those conclusions
 16 cannot reasonably be drawn from the facts alleged.”¹⁷ Further, the court need not accept as true
 17 allegations that contradict matters that are either subject to judicial notice or attached as exhibits to
 18 the complaint.¹⁸

19 “Dismissal with prejudice and without leave to amend is not appropriate unless it is clear that

20 ¹⁰ Fed. R. Civ. P. 8(a)(2).

21 ¹¹ *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

22 ¹² *Id.* at 1940 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

23 ¹³ *Id.* at 1940.

24 ¹⁴ *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

25 ¹⁵ See *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008)).

26 ¹⁶ See *id.* at 1061.

27 ¹⁷ *Clegg v. Cult Awareness Network*, 18 F. 3d 752, 754-55 (9th Cir. 1994).

28 ¹⁸ See *In re Gilead Sciences Securities Litigation*, 536 F. 3d 1049, 1055 (9th Cir. 2008).

1 the complaint could not be saved by amendment.”¹⁹ If dismissing with prejudice, a district court’s
 2 failure to consider the factors relevant to whether amendment should be permitted and failure to
 3 articulate why dismissal should be with prejudice instead of without prejudice may constitute an
 4 abuse of discretion.²⁰

5 **III. DISCUSSION**

6 **A. Declaratory Relief**

7 Sencion seeks a judicial declaration of the rights and obligations of the parties regarding the
 8 Subject Property under California foreclosure law. Ocwen argues that Sencion’s claim for
 9 declaratory relief is not sufficiently pleaded because he seeks only to redress past wrongs instead of
 10 prospective rights and that he has not pleaded facts establishing his right to the sought-after
 11 declaration. Sencion responds that there is an actual controversy because there are rights and
 12 obligations that run between Ocwen and Sencion, as Ocwen is the servicer of the mortgage.

13 Under Cal. Civ. Proc. Code § 1060,

14 “[a]ny person . . . who desires a declaration of his or her rights or duties with respect
 15 to another, or in respect to, in, over or upon property . . . may, in cases of actual
 16 controversy relating to the legal rights and duties of the respective parties, bring an
 17 original action . . . for a declaration of his or her rights and duties in the premises.”²¹

18 A claim for declaratory relief requires the plaintiff to demonstrate the existence of an actual
 19 controversy regarding the legal rights of the parties.²² Declaratory relief operates prospectively and
 not merely for the redress of past wrongs.²³ The purpose of a declaratory judgment is to set

20 ¹⁹ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F. 3d 1048, 1052 (9th Cir. 2003).

21 ²⁰ See *id.* at 1052.

22 ²¹ Cal. Civ. Proc. Code § 1060 (West 2010).

23 ²² See *McClain v. Octagon Plaza, LLC*, 71 Cal. Rptr. 3d 885, 898 (Ct. App. 2008).

24 ²³ See *Babb v. Superior Court of Sonoma County*, 3 Cal. 3d 841, 848 (1971); see also *Jensen v. Quality Loan Service Corp.*, 102 F. Supp. 2d 1183, 1188 (E.D. Cal. 2010). The quotation relied on by
 25 Ocwen from *County of San Diego v. State*, 164 Cal.App.4th 580, 607 (2008) omits the crucial word
 26 “merely” from the original quote. See, *Babb*, 3 Cal.3d at 848 (1971) (““(D)eclaratory procedure operates
 27 prospectively, and not *merely* for the redress of past wrongs” (emphasis added)) (quoting *Travers v. Louden*, 254 Cal.App.2d 926, 931 (1967)). In *Travers*, the appellate court explained that “The fact that
 28 the procedure operates prospectively does not create a conflict with the established principle that redress
 for past wrongs may be had in a proper action for declaratory relief.” *Travers*, 254 Cal.App.2d at 931
 (relying on Cal.Cod.Civ.Pro. § 1060, *Columbia Pictures Corp. v. DeToth*, 26 Cal.2d 753 (1945) and
Ermolieff v. R.K.O. Radio Pictures, 19 Cal.2d 543 (1942)).

1 controversies at rest before they cause harm to the plaintiff in the interest of preventive justice, not to
 2 remedy harms that have already occurred.²⁴

3 The FAC, along with its exhibits, sufficiently states a cause of action for declaratory relief
 4 against Ocwen. Attached to the FAC is a letter from Ocwen to Sencion informing him that
 5 “effective April 21, 2010, the servicing of your mortgage loan, that is the right to collect payments
 6 from you, will be assigned, sold and/or transferred from Saxon Mortgage Services Inc to Ocwen.”
 7 The letter also instructed Sencion to direct his monthly mortgage payments to Ocwen. The FAC
 8 alleges that Ocwen has engaged in wrongful conduct by attempting to negotiate terms for Sencion to
 9 vacate his home. Also, Ocwen acknowledges in its supplemental brief that it is currently responsible
 10 for servicing the property for the new owner, and that such services generally include securing the
 11 property, evicting tenants and reselling the property. Thus, in contrast to the allegations against
 12 Saxon,²⁵ Sencion’s allegations against Ocwen sufficiently allege an actual controversy relating to, at
 13 a minimum, Sencion’s payment obligations and Ocwen’s present right to service the Subject
 14 Property.

15 **B. QUIET TITLE**

16 The FAC fails to allege that Ocwen asserts any adverse claim to the Subject Property. While
 17 Sencion alleges that “Defendants purchased the Subject Property,” the Trustee’s Deed attached as
 18 Exhibit Q to the FAC shows that the Subject Property was transferred to “Deutsche Bank National
 19 Trust Company, as Trustee for NATIXIS Real Estate Capital Trust 2007-HE2.” The court need not
 20 accept as true Sencion’s allegation that “Defendants” (presumably including Ocwen) purchased the
 21 Subject Property, because it is contradicted by the attached Trustee’s Deed.²⁶

22 Based on the record before the court it appears Ocwen has not asserted any adverse claim to
 23 title to the Subject Property on its own behalf, and thus dismissal of this claim without prejudice is
 24 warranted as to Ocwen.

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 26²⁴ See *Babb*, 3 Cal. 3d at 898; *see also Jensen*, 102 F. Supp. 2d at 1188.

27 ²⁵ See Order Granting-in-Part and Denying-in-Part Saxon’s Motion To Dismiss (Docket No. 56),
 28 11:17 – 13:5.

²⁶ See *In re Gilead Sciences Securities Litigation*, 536 F.3d at 1055.

1 **C. REMAINING CAUSES OF ACTION**

2 The three remaining causes of action for breach of fiduciary duty, negligence and unfair
3 business practices are all predicated on the actions of Saxon in selling the Subject Property at a
4 trustee's sale after Sencion had been approved for a loan modification. Those actions all took place
5 *before* Saxon purported to transfer the loan servicing to Ocwen. Sencion argues that Ocwen is liable
6 for Saxon's actions because Ocwen took over the loan servicing from Saxon. However, Sencion has
7 cited no authority for any general imposition of successor liability under these circumstances, and
8 has not alleged that Ocwen entered into any agreement to assume Saxon's liabilities in connection
9 with servicing Sencion's loans. Dismissal of these claims as to Ocwen without prejudice is thus
10 warranted.

11

12 **IV. CONCLUSION**

13 Ocwen had no involvement with either Sencion or the Subject Property until after the
14 trustee's sale, and thus dismissal without prejudice of all causes of action stemming from that sale is
15 warranted as to Ocwen. Because Sencion has not alleged that Ocwen asserts any adverse title claim
16 to the Subject Property, dismissal of the quiet title cause of action as to Ocwen without prejudice
17 also is warranted. Because the declaratory relief cause of action states a cognizable claim against
18 Ocwen, dismissal of that claim is not warranted.

19 Dated: *February 3, 2011*

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PAUL S. GREWAL
United States Magistrate Judge

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